

IN THE HIGH COURT OF BOMBAY AT GOA.

CRIMINAL APPEAL NO. 47 OF 2001.

Mr. Prakash @ Khemu Naik,
Central Jail, Aguada.

... Appellant.

Versus

State.

... Respondent.

Mr. Shivan Dessai, Advocate for the Appellant.

Mrs. W. Coutinho, Additional Public Prosecutor for the
Respondent/State.

Coram : P.V. HARDAS, J.

Date : 9th October 2003.

ORAL JUDGMENT.

The appellant/accused, being aggrieved by his conviction for offences punishable under Sections 498-A and 306 of the Indian Penal Code and sentence of rigorous imprisonment for 1 year and fine of Rs. 3,000/- in default simple imprisonment for 3 months and rigorous imprisonment for 5 years and fine of Rs. 5,000/- in default simple imprisonment for 5 months respectively, passed by the IInd Additional Sessions Judge, Panaji, by Judgment, dated 29th August 2001, in Sessions Case No. 7 of 2000, has filed the present appeal challenging the aforesaid conviction and sentence.

2. The facts in brief, as are necessary for the decision of the appeal, are set out hereunder:-

On 27th August 1999, at about 7.45 p.m., one Satish Naik appeared at the Ponda Police Station and lodged a report, at Exhibit 30, that his sister-in-law Nutan @ Deepali had committed suicide. The said report was recorded by P.W.13 P.I. Mohan Naik, who at that time was working as Officer-in-Charge of Ponda Police Station. On the basis of the said report, UD No. 58/99, under Section 174 of the Code of Criminal Procedure, was registered. As the deceased Nutan @ Deepali had died within 7 years of her marriage, P.W.13 P.I. Mohan informed P.W.12 Arvind Chikkodi Sub-Divisional Magistrate to hold an inquest on the dead body. P.W.12 Arvind, accordingly, executed the inquest panchanama, at Exhibit 6, in the presence of P.W.1 Rekha Parab. Thereafter the scene of offence panchanama, at Exhibit 16, was drawn by P.W.13 P.I. Mohan, in the presence of P.W.4 Ganu Naik. A pink colour nylon rope tied to the ceiling fan as well as a piece of the same colour rope lying on the floor came to be attached. A writing pad bearing the suicide note also came to be attached. Photographs, at Exhibit 23, of the scene of offence were also taken. On 28th August 1999, a requisition, at Exhibit 31 Colly, was addressed to the Professor of Forensic Medicine, for conducting the postmortem examination. On the same day P.W.6 Kashinath Naik, father of the deceased, lodged his complaint, at

Exhibit 19. On the basis of the said complaint, vide Crime No. 199/99, offences under Sections 498-A and 306 of the Indian Penal Code came to be registered. The postmortem examination was conducted by P.W.3 Dr. Andre Fernandes and the postmortem report is at Exhibit 13. According to P.W.3 Dr. Fernandes, the deceased died due to asphyxia as a result of hanging. The viscera of the deceased was forwarded, vide Exhibit 32, to the Director of Central Forensic Science Laboratory. The Central Forensic Science Laboratory by its report, at Exhibit 33, opined that the tests negatived the presence of poison. On 17th September 1999, the admitted specimen writing of the deceased came to be attached from the house of the complainant. P.W.2 Revansidda Bhonsle Assistant Government Examiner by his report, at Exhibit 10, has opined that the suicide note was in the handwriting of the deceased. Exhibit 34 is the marriage certificate issued by the Office of the Civil Registrar. After completion of the investigation, a charge-sheet against the appellant came to be filed.

3. After committal of the case to the Court of Sessions, the learned IInd Additional Sessions Judge, Panaji, vide Exhibit 3, framed a charge against the appellant/accused for offences punishable under Sections 498-A and 306 of the Indian Penal Code. The

appellant/accused denied his guilt and claimed to be tried. The prosecution in support of its case examined 13 witnesses while the accused in support of his defence examined 3 witnesses. The learned trial Court, on consideration of the evidence of the prosecution, convicted and sentenced the accused as aforestated.

4. Mr. Dessai, the learned counsel appearing on behalf of the appellant, has submitted that the evidence tendered by the prosecution is miserably insufficient to bring home the offences against the accused. The learned counsel has further submitted that there is no evidence whatsoever that the deceased was treated with cruelty, which was of such nature as was likely to drive her to commit suicide. He has further submitted that there is no evidence in respect of any incident which had occurred just prior to the deceased committing suicide and, therefore, the appellant/accused cannot be said to have abetted the commission of suicide. According to the learned counsel for the appellant, the appellant/accused is entitled to be acquitted.

5. The learned Additional Public Prosecutor has submitted that there is overwhelming evidence to justify the conviction and sentence passed against the appellant and has prayed for dismissal of the appeal.

6. The evidence of cruelty can be gathered from the evidence of the relatives of the deceased. The prosecution has examined P.W.5 Vimal Naik, who is the mother of the deceased, P.W.6 Kashinath Naik, who is the father of the deceased, P.W.7 Rupa Naik, who is the sister-in-law and P.W.9 Anand Naik, who is the brother of the deceased. I shall, therefore, advert to the evidence of these witnesses first.

7. P.W.5 Vimal in her evidence states that she had two daughters and one son. Deceased Nutan was married to the brother of the accused, named, Dinesh, on 20th February 1999. She had studied upto Standard XII. Dinesh was working as an operator in the MRF Factory. On the next day of the marriage, as was customary, she went to the house of her daughter alongwith 20 other persons, for the performance of the custom of 'Khalmaal'. This ritual of 'Khalmaal' was performed by the appellant/accused and his wife since he had performed the marriage ceremony of Dinesh and the deceased. After this ritual was over, she was told by the family of the accused that they wanted to do the ceremony of 'Panch Partavan'. P.W.5 Vimal, therefore, requested the accused to attend 'Panch Partavan' on the next Sunday as on the preceding Sunday because of the festival of Holi, non-veg could not be cooked. To this the accused spoke

in an arrogant tone that if 'Panch Partavan' was not held on the first Sunday of the marriage, he would not send deceased Nutan to her house for two months. He is further alleged to have stated that, since he was the eldest of the four brothers, everything should be done as per his wish. Therefore, the ceremony of 'Panch Partavan' was performed and P.W.5 returned to her house. She is alleged to have fainted when the accused had opposed her wish of performing the 'Panch Partavan' on the second Sunday following the marriage. For holding 'Panch Partavan' at her residence, P.W.5 Vimal along with her husband P.W.6 Kashinath had gone to the house of the accused. They had gone to the house of the accused on a Saturday. When she discussed the date for fixing the ceremony of 'Panch Partavan' with Dinesh, Dinesh is alleged to have said that P.W.5 Vimal should ask his brother. The appellant/accused is alleged to have told them to keep the ceremony of 'Panch Partavan' on the next day, that is, on Sunday. P.W.5 Vimal told the accused that at such a short notice all the arrangements were difficult to be done. However, P.W.5 Vimal agreed for performing the 'Panch Partavan' on the next day. On the next day, she sent her neighbour one Vijaykumar for bringing the deceased and others for the function. P.W.5 Vimal then asked Dinesh as to when she should send someone for bringing the deceased to her house and

Dinesh is alleged to have stated to ask the accused. Accordingly, P.W.5 Vimal told the accused that she would send somebody to bring the deceased to her house, to which, the accused had stated that he would let her know after he goes home. The accused, however, did not inform her as to when she should come to collect the deceased and, therefore, she asked P.W.6 Kashinath to telephone the deceased and ask her as to when the traditional sweets should be sent. The deceased is alleged to have informed her that her husband would come to her house. About a day prior to Ashadi Ekadashi, the deceased came alone and the deceased had disclosed not to send the traditional sweets. She had also disclosed that the accused was harassing her all the time and the accused did not want any relatives of the deceased to visit her. The deceased is also alleged to have disclosed to P.W.5 Vimal that neither her mother-in-law nor her husband and his brothers were causing any harm to her except the accused, who was harassing her all the time. After about 4 days P.W.5 Vimal went to the house of the accused. The accused is alleged to have told her not to come to his house and that there was no need to bring the traditional sweets. When she asked the accused as to why he does not want anything from her, the accused is alleged to have stated that the deceased is gifted with very small gifts and of no value and even

the gold chain gifted to Dinesh was weighing only 2 sovereigns. P.W.5 Vimal told Dinesh that she could not afford to gift him a heavier chain. During the month of Shravan P.W.5 Vimal telephoned the deceased and told her to find out from her mother-in-law and her husband as to when P.W.5 Vimal should take her to celebrate two Shravan Sundays as per the custom. On the first Shravan Sunday, P.W.5 Vimal, accordingly, sent P.W.6 Kashinath to the house of the deceased for bringing her to her house. The accused, however, refused to send the deceased and, therefore, P.W.6 Kashinath returned alone. On the Raksha Bandan day, which was on the 26th of August, the deceased had come to her house at 4.00 p.m.. The deceased is alleged to have disclosed that the accused was not willing to send the deceased to the house of P.W.5 Vimal. However, the mother-in-law and the husband of the deceased had allowed her to come to the house of P.W.5 Vimal. The deceased had informed her that, while she was coming out of the house, she had seen the accused proceeding to Dhavli. The deceased also expressed fear that the accused would shout at her for not seeking his permission. The deceased left the house of P.W.5 Vimal at about 5.00 p.m.. P.W.5 Vimal had told the deceased to phone her as soon as she reached her house but the deceased told her that, in case the accused was in the house, she would not phone

P.W.5 Vimal. According to P.W.5 Vimal, she did not receive any telephone call from the deceased. P.W.5 Vimal then states that the deceased had informed P.W.5 Vimal that the deceased had a disturbed menstrual cycle due to which the accused was questioning her. P.W.5 Vimal had taken her to Dr. Savoikar at Ponda. Dr. Savoikar, on examining the deceased, had opined that the disturbance was natural on account of marriage. P.W.5 Vimal then states that during the naming ceremony of the child of her eldest daughter, the deceased alone had attended. The deceased had informed her that her husband and his sister would come on the next day. On the next day neither Dinesh nor his sister came to her house and the deceased had disclosed that the accused had ordered Dinesh and his sister not to come to the house of P.W.5 Vimal to attend the naming ceremony. It appears that the deceased had taunted her husband Dinesh as to why he should listen to everything that the accused said and the accused is said to have slapped the deceased. Thereupon Dinesh also slapped the accused. P.W.5 Vimal then states that the deceased informed her that Dinesh had decided to take a separate residence.

8. On 27th August, at about 7.30 p.m., Mahesh, brother of the accused, had telephoned and had informed that the deceased was serious. Accordingly, P.W.5

Vimal, P.W.6 Kashinath, P.W.9 Anand, one Prakash and the driver of the maruti car went to Dhavli. When she went to the house of the deceased, she saw her lying on the bed. She tried to wake her up. She, therefore, asked Dinesh as to what had happened to her daughter and whether they had killed her. Dinesh is alleged to have replied by saying that she should not ask him anything but should ask the accused. She states after some time P.W.13 P.I. Mohan came to the house of the deceased and photographs were taken.

9. In the cross-examination she has admitted not to have stated in her statement that soon after the ceremony of 'Khalmaal', she had stated that the marriage was a failure. She has also stated that she does not re-call if she had stated in her statement that she had gone to the house of the deceased to invite them for 'Panch Partavan' after about 2 months of the marriage. She has also admitted not to have stated in her statement that Dinesh had asked her to ask the accused about sending the deceased to her house. She has also admitted not to have stated to the police that when she asked the accused why he did not want anything from her, the accused told her that everything that was gifted or done was very small and that Dinesh could afford a gold chain worth 5 sovereigns. Similarly she has stated that

she does not know if she had stated in her statement that she had phoned the deceased and had asked her to come to celebrate two Shravan Sundays as per the tradition. She has also not stated to the police that the deceased had told her soon after the marriage that she had a disturbed menstrual cycle and the accused was harassing her by asking the reason for the same. She has also admitted not to have stated in her statement to the police that the deceased had asked her husband whether he would listen to everything that the accused told him and that there was some dispute between the husband and wife and the accused had slapped her and thereupon Dinesh had slapped the accused. Similar omissions have been brought out in respect of the deceased having revealed to her that Dinesh had decided to take up separate residence and the accused refusing to allow them to reside separately. Omission was also brought out in respect of this witness telling the deceased that in case the harassment of the deceased continued, she would arrange for accommodation for the two of them. Omission was also brought out in respect of the deceased informing P.W.5 Vimal that except the accused everyone used to permit her to stay overnight and the accused used to say that it is not proper for her to stay in her parents' house. Omission was also brought out in respect of this witness asking Dinesh as

to what they had done to the deceased and whether they had killed her and Dinesh telling the witness to ask the accused.

10. From the evidence of this witness the following instances of cruelty emerge:- (1) the accused insisted on the performance of the ceremony of 'Panch Partavan' immediately on the next Sunday; (2) that the accused was harassing the deceased; (3) the accused telling the family members of the deceased not to come to the house and (4) the accused not permitting the husband of the deceased to attend the naming ceremony of the grandchild of P.W.5 Vimal.

11. P.W.6 Kashinath, father of the deceased, states that the accused started harassing his daughter for no reason and did not give her any peace even for a day. The accused was telling him not to come to his house at Dhavli to see their daughter and there was no need to bring any sweets. On 16th August 1999, when he had gone to invite his daughter for celebration of Shravan Sunday, the accused had stated that he would not send the deceased for the said purpose. During one of the visits, the deceased had informed him that the accused was harassing her. The deceased had also informed him that when the other family members of the

house used to be away and the deceased used to be alone in the house, the accused would come to the house whilst she was cooking and supervise her and stalk her so much that she used to abandon the cooking and go to her room feeling insecure. On 26th August 1999, deceased had come to his house to tie rakhi to her brother Anand and told him that her husband Dinesh had allowed her to come and that she must go back. She also told that she had met the accused and his wife on the way. P.W.6 Kashinath told his daughter to phone him when she reached home and the deceased had informed that she would not telephone if the accused was in the house. On the next day, at about 7.30 p.m., he received a telephone call from Mahesh, brother of the accused, who informed him that the deceased was sick and they should come immediately. On entering the house they saw the deceased lying on the bed and called out to her and attempted to lift her, but, there was no response and they realized that their daughter was dead. He asked Dinesh whether they had killed her and hearing this, Dinesh got irritated and said that P.W.6 Kashinath should ask the accused instead. He has also stated that the deceased had informed him that the accused had slapped her and as a result of which Dinesh had also slapped the accused. In the cross-examination he has stated that the deceased had informed him that the

accused was harassing her by humiliating her about the gifts made by her parents and other related matters. An omission has been duly proved from his complaint, at Exhibit 19, that he had not stated to the police that the deceased had told him that when she used to be alone in the house and cooking, the accused used to supervise her and stalk her and she used to feel uneasy and go to her room. Omission was also proved in respect of P.W.6 Kashinath asking Dinesh whether they had killed the deceased and Dinesh telling him to ask the accused. Omission was also brought out regarding deceased informing him that the accused had once slapped her and Dinesh had, thereupon, slapped the accused.

12. From the evidence of this witness the following instances of cruelty emerge:- (1) that the accused was harassing the deceased for no reason; (2) the accused was telling the relatives of the deceased not to come to his house and (3) the accused refusing to send the deceased for celebration of the Shravan Sundays.

13. P.W.7 Rupa, is the sister-in-law of the deceased and wife of P.W.9 Anand. She in her evidence states that the deceased had visited their house on 4 or 5 occasions after the marriage and the deceased used to

say that the accused was all the time "raking issues and creating trouble for her". According to her, the deceased had told her that the accused used to "spoil the mind of her husband by recounting tales as to create suspicion in the mind of her husband against her and create doubts about her fidelity". She also states about the deceased not staying overnight on the Raksha Bandan day. She also states that the deceased before parting for her house had told her that she had made up her mind that in case the accused tried to create any trouble for her, she would confront him and teach him a lesson. In the cross-examination she has admitted not to have stated in her statement about the incident of Raksha Bandan.

14. From the evidence of this witness the following instances of cruelty emerge:- (1) that the accused was harassing the deceased and (2) that the accused was poisoning the mind of Dinesh against the deceased and creating circumstances casting aspersions about the fidelity of the deceased.

15. P.W.9 Anand states that, on 21st February 1999, he had gone to Dhavli to attend the 'Khalmal' function and at that time the accused had insisted in holding the function on the coming Sunday or else he

would not send the deceased home for 2 months. He states that the accused started creating commotion by saying that the gold articles made for the deceased were very small and not of proper weight and no proper rituals were followed for the marriage. He states that the deceased used to tell him that the accused was spoiling the mind of her husband by giving false information and due to which her husband was not talking freely with her. He also states that the deceased had informed him that the accused had once slapped her and, thereupon, her husband Dinesh had slapped the accused. He states that on Raksha Bandan day, that is, on 26th August 1999, the deceased had come to his house to tie rakhi and had told him that she had met the accused on the way. The deceased had said that she would go home a little later in order to avoid meeting the accused. He states about receiving a telephone call on the next day at 7.30 p.m. and going to the house of the deceased and seeing her dead. He has identified the writings in the diary Exhibit 9 as the handwriting of the deceased. In the cross-examination an omission has been proved in respect of this witness not stating in his statement that on the day of 'Khalmaal' the accused had created commotion over the gold ornaments gifted to the deceased in respect of their weight, etc..

16. From the evidence of this witness the following instances of cruelty emerge:- (1) the accused poisoning the mind of the husband of the deceased regarding the fidelity of the deceased and (2) the accused having once slapped the deceased.

17. From the evidence of the relatives of the deceased and whatever instances of ill-treatment, which have been described by them, according to me, can hardly be said to be a wilful conduct on the part of the accused, which would have driven the deceased to commit suicide. The accused was, admittedly, the head of the family and his decision in not sending the deceased to the house of her parents, de hors the fact situation existing then, cannot be judged in isolation as an instance of cruel treatment. The evidence in respect of the accused slapping the deceased also does not inspire confidence. The said instance has been brought out by way of omission in the statements of P.W.5 Vimal and P.W.6 Kashinath. Similarly the instance of the accused poisoning the mind of Dinesh so as to make Dinesh question the fidelity of the deceased is also doubtful. P.W.7 Rupa and P.W.9 Anand do not speak about any disclosure in this behalf being made by the deceased. Cumulatively, the behaviour of the accused, according to me, cannot be said to be of such a degree as to drive

the deceased to commit suicide. The suicide note, at Exhibit 9, also does not speak about the deceased committing suicide on account of any ill-treatment of the accused. It appears that in the suicide note the deceased expressed her dissatisfaction on account of the relations between the brothers being soured. The accused had examined himself as D.W.1 and had examined Dinesh and Mahesh as the other defence witnesses. The learned trial Court in paragraph 16 has held:- "D.W.3 Mahesh Naik has also admitted that the accused being the eldest male in the family, all decisions are taken with his concurrence. But most surprisingly, D.W.1, the accused has stated that he does not know anything about the finalization of marriage between the deceased and Dinesh and that he was informed only 4 days prior to the marriage. This conduct of the accused in telling lies to the Court, itself proves his guilty consciousness." As to why the deceased ultimately committed suicide is a mystery, since the prosecution evidence is not clear. However, the evidence on record does not suggest that the conduct of the accused was a wilful conduct, which would have driven the deceased to commit suicide. Stray instances of the normal wear and tear of married life or stray instances of either domineering behaviour or abnormal behaviour of the family members cannot be construed as instances of cruelty. The cruelty which is

contemplated under Section 498-A is wilful conduct of a person which would drive a woman to commit suicide. The evidence on record falls miserably short of establishing the offence under Section 498-A. There is absolutely no evidence regarding the commitment of abetment of the suicide by the accused. Therefore, according to me, the accused is entitled to be given the benefit of doubt.

18. In the result, therefore, the Appeal is allowed. The conviction and sentence as passed by the IInd Additional Sessions Judge, Panaji, by Judgment, dated 29th August 2001, in Sessions Case No. 7 of 2000, is hereby quashed and set aside and the appellant is acquitted of the aforesaid offences with which he was charged and convicted. Bail Bond stands cancelled. Fine, if paid, shall be refunded to the appellant.

(P.V. HARDAS)
JUDGE.

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